

This letter concerns the rolling stock exemption. See 86 Ill. Adm. Code Section 130.340. (This is a GIL.)

March 19, 2010

Dear Xxxxx:

This letter is in response to your letter dated December 9, 2009, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our client is an LLC (hereafter, ABC) that operates trucks throughout the Midwest. These trucks are all used primarily to deliver the product of a related company ‘for hire’ (hereafter, Manufacturer). ABC has an Interstate Commerce Commission Certificate of Authority from the Illinois Commerce Commission. The trucks all exceed 16,000 pounds. ABC has some trucks based outside Illinois that deliver the product from Manufacturer’s plant outside Illinois to the various distribution centers throughout the Midwest (including an Illinois distribution center). ABC also has different trucks based in Illinois (titled and registered in IL) that deliver the product from the Illinois distribution center to the various customers throughout Illinois.

Manufacturer has contracted with ABC to deliver its product. About 75% of ABC’s deliveries are for Manufacturer. The remaining 25% are for unrelated third parties whose products may originate in Illinois. All of Manufacturer’s product is manufactured outside of Illinois. At the time the product leaves Manufacturer’s plant, the ultimate customer is unknown. It is not until the order is placed and fulfilled from the distribution center in Illinois that the customer and final delivery destination is known. However, it is known that all of the product delivered by ABC for Manufacturer to Illinois destinations originated outside of Illinois.

### **Issues**

Because all of the product being delivered to Illinois destinations for Manufacturer originates outside of Illinois, it all undergoes an interstate journey. Does ABC' use of the Illinois based trucks qualify for the rolling stock exemption in Illinois?

## **Resolution**

Since virtually every trip taken by ABC includes carrying Manufacturer's products that originate outside of Illinois, ABC is involved in the interstate transportation of the product, and the rolling stock exemption applies. The delivery from outside of Illinois to the distribution center in Illinois and the subsequent delivery from the distribution center to the ultimate destination in Illinois should be treated as the entire delivery. Because of this, the trucks are used in interstate commerce.

We are asking you to rule that the trips of ABC be considered interstate when calculating the rolling stock exemption test. Every truck used by ABC is a part of that interstate journey. Even though the Illinois-based trucks do not directly travel outside Illinois more than 50% of their trips or miles, they are still part of the interstate delivery and should qualify as used in interstate commerce (35 ILCS 120/2-50). The fact that the exact final destination of each specific product is not known when it is in transit from outside Illinois to an Illinois destination should not override the fact that it is known, with no uncertainty, that the product shipments originate outside of Illinois and are transported in interstate commerce.

## **Analysis**

Illinois law provides an exemption for trucks that are determined to qualify as 'rolling stock'.<sup>i</sup> To qualify as rolling stock, all three of the following requirements must be met:

1. The company operating the trucks must possess an Interstate Commerce Commission Certificate of Authority from the Illinois Commerce Commission.
2. The carrier must be delivering the passengers or property 'for hire'.
3. The carrier must transport the passengers or property in interstate commerce.

Effective July 1, 2004, motor vehicles that carry persons or property for hire, even just between points in Illinois, will be considered used for hire in interstate commerce if the motor vehicle transports persons whose journeys or property whose shipments originate or terminate outside Illinois<sup>ii</sup>.

Beginning on July 1, 2004, the exemption for motor vehicles used as rolling stock moving in interstate commerce cannot be claimed for motor vehicles whose gross vehicle weight rating is 16,000 pounds or less<sup>iii</sup>.

For purchases of motor vehicles made on and after July 1, 2004, a motor vehicle whose gross vehicle weight rating exceeds 16,000 pounds will qualify for the rolling stock exemption if, during a 12-month period, it carries persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the rolling stock exemption for a motor vehicle must make an election at the time of purchase to use either the trips or mileage method to document that the motor vehicle will be used in a manner that qualifies for the exemption.<sup>iv</sup>

Documentation of all trips taken by the motor vehicle in each 12-month period must be maintained and be made available to the Department upon request. Any use of the motor vehicle in a movement from one location to another, including but not limited to mileage incurred by a motor vehicle returning from a delivery without a load or passengers, is counted as a trip or mileage.<sup>v</sup>

In a general information letter<sup>vi</sup> the Department ruled that there was not enough information provided to issue a private letter ruling, primarily because there was insufficient information on the initial origination or final destination of passengers that were either dropped off or picked up at the airport. The GIL went on to say that 'a carrier may use intrastate trips to qualify for the rolling stock exemption, so long as the carrier can document that the journey of the passenger or shipment of the property either originated or terminated outside the State of Illinois.' While our client does not have documentary evidence to support that a specific, individual product originated outside of Illinois, it can support that all of its products originate outside of Illinois. Accordingly, the need to support each individual product seems unnecessary given our client's facts.

In *State of Illinois vs. ABC Leasing, Inc.*<sup>vii</sup>, the taxpayer was a for hire carrier that claimed it delivered materials in interstate commerce. The ultimate ruling was that the trucks did not qualify for the rolling stock exemption because there was no documentary evidence to prove that the product the taxpayer delivered in Illinois ultimately terminated its journey outside of Illinois. Again, our client's case differs from the facts in this case, as our client knows that 100% of the product they deliver for Manufacturer originates outside of Illinois.

Thank you for your time to consider our request. Please contact me if you have any questions.

## **DEPARTMENT'S RESPONSE:**

Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. (35 ILCS 120/2-5(12)) In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. (35 ILCS 120/2-5(13)) See 86 Ill. Adm. Code 130.340(a).

Effective July 1, 2004, the trips or mileage of a motor vehicle for which persons or property are carried for hire just between points in Illinois may be used to qualify for the rolling stock exemption, if the journey of the passenger or shipment of the property either originates or terminates outside of Illinois. A carrier may use intrastate trips to qualify for the above-mentioned rolling stock exemption, so long as the carrier can document that the journey of the passenger or shipment of the property either originated or terminated outside the State of Illinois. See 86 Ill. Adm. Code 130.340(g).

For example, if the initial documentation for a shipment of goods from out-of-state into Illinois indicates that the destination is at the warehouse in City A, Illinois, then any subsequent shipment of the goods from the warehouse in City A to another destination in Illinois will not qualify as part of an

interstate trip. However, if the initial documentation for a shipment of goods from out-of-state into Illinois indicates that the destination is at City B, Illinois, via the warehouse in City A, then the subsequent travel of the goods from the warehouse in City A to the destination in City B can count as part of the interstate trip.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess  
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DMB:msk

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<sup>i</sup> 35 ILCS 120/2-50.

<sup>ii</sup> 35 ILCS 120/2-51(c).

<sup>iii</sup> Ill. Admin. Code tit. 86 § 130.340(i)(1)(B).

<sup>iv</sup> Ill. Admin. Code tit. 86 § 130.340(i)(1)(C).

<sup>v</sup> Ill. Admin. Code tit. 86 § 130.340(i)(1)(D).

<sup>vi</sup> ST 04-0215-GIL, Nov. 29, 2004.

<sup>vii</sup> Administrative Hearing Decision No. UT 08-7, May 12, 2008.